

# **IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

HENRY T. HERSCHEL, MATTHEW W. MURPHY, and JOHN A. TACKES,

Respondents,

v.

JEREMIAH W. NIXON, JOHN R. WATSON, LAWRENCE G. REBMAN, PETER  
LYSKOWSKI, THE DIVISION OF WORKERS' COMPENSATION OF THE DEPARTMENT  
OF LABOR AND INDUSTRIAL RELATIONS OF THE STATE OF MISSOURI, and THE  
OFFICE OF ADMINISTRATION, STATE OF MISSOURI,

Appellants.

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**DOCKET NUMBER WD71518**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** November 23, 2010

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**APPEAL FROM**

The Circuit Court of Cole County, Missouri  
The Honorable Jon E. Beetem, Judge

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**APPELLATE JUDGES**

Division Two: Mark D. Pfeiffer, Presiding Judge, and Victor C. Howard  
and Alok Ahuja, Judges

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**ATTORNEYS**

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## MISSOURI APPELLATE COURT OPINION SUMMARY

### MISSOURI COURT OF APPEALS, WESTERN DISTRICT

HENRY T. HERSCHEL, MATTHEW W. )  
MURPHY, and JOHN A. TACKES, )

Respondents, )

v. )

JEREMIAH W. NIXON, JOHN R. )  
WATSON, LAWRENCE G. REBMAN, )  
PETER LYSKOWSKI, THE DIVISION )  
OF WORKERS' COMPENSATION OF )  
THE DEPARTMENT OF LABOR AND )  
INDUSTRIAL RELATIONS OF THE )  
STATE OF MISSOURI, and THE )  
OFFICE OF ADMINISTRATION, STATE )  
OF MISSOURI, )

Appellants. )

WD71518

Cole County

Before Division Two Judges:

Mark D. Pfeiffer, Presiding Judge, and  
Victor C. Howard and Alok Ahuja, Judges

This lawsuit was filed in the Circuit Court of Cole County by Henry T. Herschel, Matthew W. Murphy, and John A. Tackes, each of whom is an Administrative Law Judge in the Division of Workers' Compensation of the Department of Labor and Industrial Relations (the three plaintiffs are collectively referred to as "the ALJs"). The ALJs are the three most junior Administrative Law Judges in the Division, measuring their seniority based on their ALJ service. On June 15, 2009, the ALJs received a letter informing them that, effective June 30, 2009, their "service as an administrative law judge will end."

The ALJs sought an injunction preventing their impending removal from employment with the Division. Following a bench trial, the trial court entered a permanent injunction enjoining the State from terminating the ALJs. The State appeals. We reverse.

**REVERSED.**

**Division Two holds:**

In its conclusions of law, the trial court held that section 287.610, the statute that authorizes the ALJ position, established a statutory scheme which prevented the Division from terminating ALJs for budgetary reasons. Consequently, this is a case involving construction of section 287.610. Two issues are presented: (1) does section 287.610 provide that ALJs may *only* be removed or discharged for cause; and (2) if the answer to the first question is “no,” did the Director have the authority to remove five ALJs under the facts and circumstances of this case pursuant to section 287.610.1?

A review of the plain language of section 287.610 shows that the statute provides a dual mechanism for removal of ALJs, with the first based on the individual performance of an ALJ and the second based on the legislature’s appropriations to the Division. When examined in conjunction with the legislative history, the 2010 budget clearly reveals that the legislature did not provide appropriations for the ALJ positions in question. As a consequence, we conclude that the Director was authorized in this case to remove the ALJs in response to the legislature’s appropriation.

**Opinion by: Mark D. Pfeiffer, Judge**

November 23, 2010

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.